



OFFICE OF THE CITY CLERK

## PUBLIC SAFETY COMMITTEE

September 21, 2009

The Public Safety Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on September 21, 2009 at 3:33 p.m.

### COMMITTEE PRESENT

Dennis Kavanaugh, Chairman  
Dina Higgins  
Scott Somers

### COMMITTEE ABSENT

None

### STAFF PRESENT

Christopher Brady  
Alfred Smith  
Trisha Sorensen

#### 1. Items from citizens present.

There were no items from citizens present.

#### 2. Hear a presentation, discuss and make a recommendation on revising the Massage Establishment ordinance.

Police Staff Attorney Nancy Sorensen introduced Assistant Chief of Operations John Meza, who was present to respond to any questions the Committee may have.

Ms. Sorensen displayed a PowerPoint presentation (A copy is available for review in the City Clerk's Office) and reported that there are currently 120 massage parlors that are licensed to do business in the City of Mesa. She stated that at the present time, the City charges a licensing fee of \$300.

Ms. Sorensen explained that the Mesa Police Department (MPD) utilizes two enforcement tools to oversee massage establishments, including administrative investigations and criminal investigations. She noted that administrative investigations involve inspecting the business premises to enforce health and safety standards and also licensing regulations. Ms. Sorensen also remarked that criminal investigations encompass undercover operations within the massage establishment to eradicate any kind of illegal activity that may be occurring within the business.

Ms. Sorensen stated that the Public Safety Committee requested that the MPD review Mesa's existing Massage Establishment ordinance and compare it with a similar ordinance adopted by the City of Phoenix. She stated that as a result of their research, staff determined that Mesa's ordinance contains many good provisions, but noted that it could be strengthened to become a more effective enforcement tool by placing certain restrictions on the massage business and its

employees. Ms. Sorensen added that if the proposed modifications to the City's ordinance are implemented, the MPD would have better control over any illegal activity that is occurring within massage establishments.

Ms. Sorensen briefly highlighted the proposed requirements for massage establishments and massage establishment employees that would be added to Mesa's ordinance. (See Attachment 1) She commented that if there were "regional uniformity," it would be interesting to see what effect it would have on any illegal activity within the establishments.

Chairman Kavanaugh clarified that "the goal is to conform Mesa's Massage Establishment ordinance as much as possible to that in Phoenix so that people can't play cities off against each other whether there are lesser requirements or different requirements."

Ms. Sorensen concurred with Chairman Kavanaugh's statement.

Chief Meza explained that with regard to proposed requirement 8b (Identify in advance the manager and temporary manager), his officers often find during inspections that the manager of a massage establishment is not present at the business or "has stepped out." He also commented that the majority of the violations that are issued are for employees who are giving massages but do not have a State-issued massage therapist license. Chief Meza added that this particular requirement would necessitate greater accountability on the part of a massage establishment to ensure that a responsible party (i.e., manager or assistant manager) is present at the business during the hours of operation.

Committeemember Somers inquired regarding the State requirements that must be met in order for an individual to be issued a massage therapist license.

Committeemember Higgins responded that the process is similar to what would be required to receive a barber or hair stylist license. She said that it was her understanding that the person must successfully pass a written State Board examination, a practical examination and also have completed a certain number of hours of education and training.

Committeemember Somers also questioned whether it was necessary for a background check to be performed to determine if the person has been involved, for instance, in prostitution or other illegal activities.

Chief Meza stated that he was unaware of the requirements to obtain a massage therapist license, but said that staff would be happy to conduct further research in this regard, including whether background checks are performed.

In response to a question from Committeemember Higgins, Chief Meza clarified that during the officers' inspections of massage establishments, they have found that most of the businesses are licensed through the City. He noted, however, that although most of the employees provide the officers with "legitimate identification," many do not have a State-issued massage therapist license.

Ms. Sorensen concluded her presentation by stating that the MPD is asking that its police officers be given more effective enforcement tools in order to eliminate illegal activity occurring in and around massage establishments.

Chairman Kavanaugh stated that in the original staff memo to the Committeemembers, there was some confusion as to whether staff was recommending that the hours of operation at the massage establishments be regulated. He noted, however, that today's presentation seemed to infer that it would be a component of staff's proposal.

City Manager Christopher Brady clarified that it is staff's recommendation that business hours restrictions would be included as a requirement to Mesa's Massage Establishment ordinance.

In response to a question from Chairman Kavanaugh, Deputy City Attorney Alfred Smith explained that pending Council approval of the ordinance changes and the ordinance going into effect, it would apply to all current massage establishments. He added that upon the annual renewal of a massage establishment's license, staff would ensure that the entity is in compliance with the current City Code.

Committeemember Somers inquired whether staff's proposed modifications to the ordinance include certain types of physical features within a structure (i.e., the use of a curtain versus a lockable door) in order to help eliminate illicit activity occurring in a massage establishment.

Ms. Sorensen responded that Phoenix's ordinance does not contain elements such as those described by Committeemember Somers.

Committeemember Somers stated that in his opinion, if a person cannot shut a door or lock a door, there would be less likelihood that "something funny" is going on behind it.

Committeemember Higgins commented that if a person is getting a massage, that individual might prefer a door as opposed to a curtain in order to maintain a level of privacy. She added that there are legitimate massage establishments in Mesa.

Ms. Sorensen said that she would be happy to conduct further research to determine whether there are "any legal issues" with respect to Committeemember Somers' inquiry.

Chairman Kavanaugh noted that one of the proposed requirements is that the applicant must submit details of the premises as part of the licensing process. He suggested that would provide the City an opportunity to look at what is proposed in terms of the layout for the business.

Mr. Brady commented that staff considered several ideas that were presented by the Committeemembers and stated that he does not want to suggest that they are not good ideas. He noted that Chief Meza solicited feedback from the officers in the field with regard to their ability to enforce the current ordinance and said that as a result of that input, staff felt strongly that the first implementation of this ordinance was the idea of "taking something that already exists." Mr. Brady also advised that the proposed modifications to Mesa's ordinance would create greater consistency with Phoenix and Scottsdale.

Mr. Brady further explained that what staff is suggesting is to proceed with the proposed modifications to the Massage Establishment ordinance, seek Council approval, and then revisit the matter at a future date to assess, with input from Chief Meza, whether it has been an effective enforcement tool for the Police Department. He also noted that "there is always a balance in how far do we need to go to be effective before we start crossing a line maybe in affecting the legitimate massage establishments."

Chairman Kavanaugh clarified that through this process, the City would conform its Code to communities that have “a track record” of compliance. He stated that if there were legal challenges with regard to critical provisions in other communities, Mesa would have the advantage of reviewing the decisions of the court in response to those challenges.

Committeemember Higgins referenced Attachment 1, Section A, 8c, and suggested that the language be revised to state: Submit the name and photograph of all of the employees of the massage establishment **and a copy of their current license**.

Ms. Sorensen concurred with Committeemember Higgins’ suggestion.

It was moved by Committeemember Somers, seconded by Committeemember Higgins, that staff be directed to move forward with the proposed changes to the Massage Establishment ordinance and that the revised ordinance be presented to the full Council.

Committeemember Higgins commented that in reviewing a document entitled “City of Mesa Massage Establishments – August 2009” (See Attachment 2), she realized that she knows of other massage establishments that have not been included on the map.

Mr. Brady asked that Committeemember Higgins provide staff with any information she may have to update their records.

Chairman Kavanaugh called for the vote.

Carried unanimously.

Chairman Kavanaugh thanked Ms. Sorensen and Chief Meza for their efforts and hard work and stated that the new ordinance would be an effective enforcement tool for the Mesa Police Department. He added that he looks forward to a discussion of this item by the full Council.

3. Hear an update and discuss the Police Department’s Use of Force Review Board.

Police Staff Attorney Nancy Sorensen introduced Police Chief Vicki Myers, who was present to respond to any questions the Committee may have.

Ms. Sorenson displayed a PowerPoint presentation (A copy is available for review in the City Clerk’s Office) and reported that the Mesa Police Department (MPD) convenes its Use of Force Review Board under the following circumstances: 1.) When an officer involved shooting occurs that results in death or serious injury requiring hospitalization; 2.) When a person dies in custody of the MPD; and 3.) As deemed necessary by the Chief of Police.

Ms. Sorensen explained that the Board is composed of three commanders appointed by the Police Chief, herself as staff attorney, two citizens, MPD representatives from the Policy Unit, Training and Internal Affairs, and representatives for any other technical assistance that may be needed. She stated that the citizen members of the Board must be graduates of the Mesa Citizens Police Academy and willing to serve for two years. Ms. Sorensen added that the City Manager’s Office maintains a list of citizens who have graduated from the Academy and also maintains/updates the list of citizens who would sit on the Use of Force Review Board.

In response to a question from Chairman Kavanaugh, Assistant to the City Manager Trisha Sorensen confirmed that the citizen members are appointed for a two-year term. She said that she currently has a list of recent graduates from the Citizens Police Academy and intends to contact those individuals to determine whether they would be interested in having their names placed on the updated list.

In response to a question from Chairman Kavanaugh, City Manager Christopher Brady stated that his office maintains a list of eligible citizens who have expressed interest and are available to serve on the Use of Force Review Board. He added that the citizens serve on a rotating basis so that everyone on the list has an opportunity to serve.

Ms. Nancy Sorensen remarked that the Use of Force Review Board generally makes a written recommendation to the Chief of Police as to whether the incident and actions of the officer involved were within or outside of department policy. She stated that the recommendation can also include a proposal to amend any department practice, policy, training or technique.

Ms. Sorensen commented, in addition, that the Use of Force Review Board typically sees cases after they have been reviewed by the Maricopa County Attorney's Office. She also stated that on occasion, the cases are scheduled after any pending civil litigation has been resolved.

Ms. Sorensen further reported that since the Board's inception in 2005, it has reviewed ten cases. She said that the Board last convened in April 2008 and heard four cases. Ms. Sorensen added that there are currently six cases pending review by the Board. She noted that citizen involvement on the Board has been invaluable. She explained that it has provided the MPD with an opportunity to educate the public on issues concerning use of force and also to work with citizens to promote understanding and accountability.

In response to a question from Chairman Kavanaugh, Ms. Sorensen clarified that citizens could make a public records request with regard to the identity of a police officer whose case would be reviewed by the Use of Force Review Board. She noted, however, that it would be necessary for staff to evaluate each request to determine the status of the particular case in question.

Chairman Kavanaugh thanked Ms. Sorensen for the presentation.

#### 4. Adjournment.

Without objection, the Public Safety Committee meeting adjourned at 3:56 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Public Safety Committee meeting of the City of Mesa, Arizona, held on the 21<sup>st</sup> day of September 2009. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK